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attain it only through the lapse of time, or by some statutory proceedings which needed the lapse of time to fortify it against collateral attack. And, again, he could bring other claimants into court only by regular personal service of process — at least if those other claimants were within the jurisdiction. The general method of procedure under this act is then novel — yet it is substantially the ordinary proceeding in actions *in rem*, as in admiralty. The act reorganizes a certain section of the law, provides an abbreviated way of settling certain controversies. It is quick, cheap, convenient, substantially fair — novel but not arbitrary. It would, it seems, be greatly to be regretted and most surprising if such an experiment in law-making may not be tried. The constitution clearly was not intended to crystallize the form of law. The Massachusetts court decided the case along such lines, and any attempt to reduce the question to petty and unstatesmanlike proportions — the case of *State* v. *Guilbert*, 56 Ohio St. 575, on the same question is typical of the modern attitude of many — is to be deprecated.

Two objections to the act, from the point of view of the public, suggest advisable amendment. First, the notice seems often inadequate, the publication is infrequent, and the space of time in which registration can be accomplished often short. Second, the act does away with the doctrine of prescriptive rights, and so most boundary blunders — where A has built his house six inches into B's lot, etc. — become incurable.

Fishing Vessels Exempt from Capture. — One of the legal outgrowths of the recent war with Spain is a noteworthy decision in international law. Two fishing vessels, owned by Spanish subjects of Cuban birth, were captured off Havana, were libelled and condemned in the District Court, on the ground that, in the absence of any ordinance, treaty, or proclamation, such vessels were not exempt from seizure as prize of war. A proclamation of the President, published some days before, had announced that the war would be conducted according to the principles of international law, but made no specific exemption of fishing boats. Upon appeal to the Supreme Court, it was held to be a rule of international law, developed gradually from an ancient usage among civilized nations, that coast fishing vessels employed in catching and bringing in fresh fish, together with their cargoes and crews, were exempt from capture. The chief justice and two others dissented, mainly on the ground that this exception was rather an act of grace than a matter of right, and should not be allowed in this case as it was not specially provided for in the President's proclamation. *The Paquete Habana, The Lola*, Supreme Court of the United States, October Term, 1899, manuscript.

Upon this question there are not many judicial decisions. The French tribunals, as well as nearly all the authoritative writers on the subject, have long considered the exception as a settled rule of international law. In the leading English case, however, a hostile fishing vessel was condemned; and although this action was in pursuance of a royal decree, Lord Stowell remarked in rendering judgment that the exemption was "a rule of comity only and not of legal decision." *The Young Jacob and Johanna*, 1 C. Rob. 20. Yet that was said a hundred years ago, and the majority in the principal case would seem to be right in the conclusion that what was then only a usage has now crystallized into an acknowl-

edged rule of international law. For it is in just such a way that the development and growth of international law takes place. Indeed, the actual dissent of England would by no means be fatal to the validity of any such rule, for the determining factor of international law is the general consensus of all nations, and not the solitary practice of any one of them. There would seem to be good reason for this exemption of fishing boats, since their seizure would serve merely to deprive poor fishermen of the means of earning their living, and the captor would reap no advantage in return. Such fishing vessels form no appreciable part of the wealth and resources of a nation, and the proceeds of their sale would hardly repay the trouble and expense of their capture and condemnation, for the boats themselves are of no great value, and the cargo of fresh fish is of such a perishable nature as to be almost worthless. Aside from this matter of expediency, there is a strong tendency in the rules of modern warfare toward respecting the rights and property of those of the enemy who are not engaged in actual fighting. The decision in the principal case, therefore, being both reasonable and fully in accord with the natural development of international law, would seem to be entirely sound.

CLOGGING THE EQUITY OF REDEMPTION. — Whether or not the invention of the equity of redemption was due to "the piety or love of fees of those who administered equity," there is certainly no interest which has been more jealously guarded. To prevent what was thought an infringement of this right, it was early established that a mortgagee should not have a collateral advantage besides interest on the mortgage debt. *Jennings* v. *Ward*, 2 Vern. 520. After the repeal of the usury laws it was suggested that the objection to a stipulation for a collateral advantage disappeared with them, but in *Broad* v. *Selfe*, 11 W. Rep. 1036, the court held that though the principle in its origin probably had reference to the usury laws, it went beyond them and was not affected by their repeal. This was affirmed in a number of cases and regretfully admitted to be law by Lord Bramwell in *Salt* v. *Marquess of Northampton*, [1892] App. Cas. 1. But in several minor details the rule had been broken in upon, as in *Mainland* v. *Upjohn*, 41 Ch. D. 126, and more notably in the West India mortgages, *Bunbury* v. *Winter*, 1 Jac. & W. 255. The first marked departure, however, from the spirit of the old cases in the direction of allowing freedom of contract was not till *Biggs* v. *Hoddinott*, [1898] 2 Ch. D. 307. It was there stipulated that the mortgagor should for a term of years buy all the beer he used in his public house from the mortgagee. The court sustained the stipulation on the ground that it did not clog the equity of redemption, as damages for the breach of the covenant were not covered by the security. Once having taken the step that a collateral advantage not expressly forbidden by any previous decision was, in the absence of fraud, allowable, it was very easy for the court to go further, since it was impossible to reconcile this case with the former cases on any satisfactory principle. The decision in *Sautley* v. *Wilds*, [1899] 2 Ch. D. 474, was therefore not wholly unexpected. In this case the mortgagee of a lease stipulated, besides interest, for one third of the net profits from any subleases, and that the relation of mortgagor and mortgagee should subsist for this purpose during the entire term of the lease, though the principal was to be paid off before its end. There being no evidence of fraud or overreaching, the stipulation was held valid.